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In the Supreme Court of the United States

OCTOBER TERM, 1980

DAVID R. FREEMAN, DIRECTOR, MISSOURI DEPARTMENT OF SOCIAL SERVICES, ET AL., PETITIONERS

v.

LOU EMMA CHAMBLY, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

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This brief is filed in response to the Court's invitation to the Solicitor General to express the views of the United States.

QUESTION PRESENTED

Whether Missouri's limitation on the type or amount of work-related transportation, clothing, and meal expenses that may be deducted by applicants for and recipients of Aid to Families with Dependent Children (AFDC) violates Section 402(a)(7) of the Social Security Act, 42 U.S.C. 602(a)(7), and an implementing regulation, 45 C.F.R. 233.20(a)(7)(i).

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STATEMENT

1. The Aid to Families with Dependent Children (AFDC) program (42 U.S.C. 601 *et seq.*) was enacted by Congress in 1935. The purpose of the AFDC program is to encourage the care of needy dependent children in their own homes or those of relatives in order to help maintain and strengthen family life and to assist parents or relatives to attain or retain the maximum self-sufficiency that is consistent with continuing parental care and protection. 42 U.S.C. 601. The AFDC program is "based on a scheme of cooperative federalism." *King* v. *Smith*, 392 U.S. 309, 316 (1968). States that elect to provide AFDC benefits to their residents receive reimbursement from the federal government on a matching-fund basis. 42 U.S.C. 603(a). These states must submit for approval by the Secretary of Health and Human Services (HHS) a State Plan that meets all requirements of the Social Security Act's AFDC provisions and implementing regulations. 42 U.S.C. 601, 602(a) and (b).

A State Plan must provide that the state agency will, in determining need, take into consideration income and resources of any child or relative seeking AFDC, "as well as any expenses reasonably attributable to the earning of any such income." 42 U.S.C. 602(a)(7). HHS regulations set forth the method of determining income: "The applicable amounts of earned income to be disregarded will be deducted from the gross amount of 'earned income,' and all work expenses, personal and non-personal, will then be deducted. Only the net amount remaining will be

applied in determining need and the amount of the assistance payment." 45 C.F.R. 233.20(a)(7)(i).

2. Missouri participates in the AFDC program and has an approved State Plan.[1] The State determines AFDC eligibility and the amount of benefits in the following manner: When an individual applies for AFDC, the income and resources of the family unit are first calculated. Missouri then applies a standard of need that includes allowances for such items as shelter, food and clothing. If the family's need, as calculated on the basis of the state standard, is in excess of the family's income and resources, the family is eligible for AFDC. The grant is measured by the amount by which need exceeds income and resources.

A section in the Manual of the Missouri Division of Family Services provides for deductions of work-related expenses from earned income in calculating the net income available to a child or relative seeking AFDC. All applicants and recipients may utilize a standard deduction of $30.00 per month for work-

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[1] Missouri's current State Plan, which was approved by HHS on September 28, 1976, does not contain the limitations on itemized transportation, clothing, and meal expenses that are at issue in this case. But the Plan does refer to the Division of Family Services' Manual, in which these limitations are set out. Although state operating manuals are kept on file in the Regional Offices of HHS, they are not subject to the formal approval by HHS that is required for a state's plan. For some time prior to September 28, 1976, the Missouri Plan itself did contain the deduction limitations that are in question here; however, HHS approval was given to that plan before Colorado's maximum standard deduction was struck down by this Court in *Shea* v. *Vialpando*, 416 U.S. 251 (1974). HHS did not challenge the deduction provisions in the earlier Missouri Plan between the date of the decision in *Shea* and the 1976 revision of the Plan.

related expenses. If the applicant or recipient has expenses in excess of the $30.00 standard deduction, he may itemize and deduct all such expenses, subject to certain limitations set out in the Manual. Chapter I, Section III, f(5) of the Manual establishes separate limitations for deduction of work-related transportation, meal, and clothing expenditures. For transportation expenses, the applicant or recipient may deduct 17 cents per mile if he uses a private automobile for traveling to and from work. For meals during the work day, a deduction of up to $1.00 per day is allowed.[2] For work-related clothing, an AFDC applicant or recipient may deduct only the cost of any uniforms or special shoes required in connection with employment. Expenditures for other clothing worn to work may not be deducted. If the total of itemized expenditures (including expenditures for other items, such as child care, that are not subject to absolute limitations) exceeds the personal standard deduction of $30.00, the applicant or recipient may deduct the greater amount in calculating his net income.

3. Respondents Chambly, Loeffel, and Schoue filed this class action in the United States District Court for the Western District of Missouri on behalf of themselves and all other Missouri residents eligible to receive AFDC benefits (Pet. App. A-7). They alleged that the provisions of the Manual of the Missouri Division of Family Services that place absolute limitations on the amount of transportation, meal, and clothing expenses an AFDC applicant or

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[2] When this suit was filed, the maximum deductions for these expenses were 15 cents per mile for transportation and 60 cents per day for meals (Pet. App. A-14 n.5). These figures have since been increased to the amounts indicated in the text (Pet. 7).

recipient may deduct are inconsistent with the Social Security Act's requirement that "any expenses reasonably attributable to the earning of * * * income" be considered in determining need. 42 U.S.C. 602 (a) (7).[3]

Respondent Chambly, an AFDC recipient, testified that her actual expenditures for lunch at a restaurant near her place of employment exceeded 60 cents per day, the applicable ceiling on deduction of expenditures for meals at the time. See note 2, *supra*. She also testified that although she was not required to wear uniforms or special shoes to work, it was necessary for her to purchase office-type clothing that she otherwise would not buy in order to comply with the dress code at the library where she worked. Chambly testified that the clothes she wears at home or when going out in the evening would not be suitable for her work and that she wears her office clothes only while on the job or commuting to and from her job (Pet. App. A-8).

Similarly, respondent Schoue testified that her expenses for lunch at a restaurant near her office were in excess of 60 cents per day and that, because of substantial car repair bills, her transportation costs exceeded the 15 cents per mile then allowed. She stated that she would sell her car if it were not for her job. Schoue also testified that because of dress requirements, she needed to purchase clothes, other than uniforms, for use solely in the office (Pet. App. A-8 to A-9).

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[3] Respondents also contended that these limitations violate the Due Process and Equal Protection Clauses of the Constitution (Pet. App. A-5 to A-6), but the district court did not reach the constitutional questions in light of its disposition of the statutory claim (*id.* at A-12).

Respondent Loeffel's testimony showed that her transportation costs were higher than the 15 cents per mile then allowed due to her high-risk insurance premium and that her employment required the purchase of clothing that she wore almost exclusively for work (Pet. App. A-9 to A-10).

Because of the expenditure limitations in the Manual, the three named respondents were precluded from demonstrating that their actual expenses for transportation, meals, and clothing were reasonably attributable to the production of earned income. As a result, the AFDC grants to respondents Chambly and Schoue were lower than they would have been if their actual expenses for these items were deductible. Respondent Loeffel was denied an AFDC grant altogether because, without deducting her actual work-related expenses for clothing and transportation, the amount of her earned income rendered her ineligible.

4. The district court held that the limitations in the Manual on the amount that could be deducted for meals and transportation and the types of clothing for which expenses could be deducted violate 42 U.S.C. 602(a)(7). The court found the limitations unlawful because they preclude AFDC applicants and recipients from showing that their expenditures for meals, clothing, and transportation in excess of the Manual's limitations nevertheless are reasonably attributable to the production of earned income (Pet. App. A-10 to A-12, citing *Shea* v. *Vialpando*, 416 U.S. 251 (1974)). The court enjoined petitioners from enforcing Chapter I, Section III, f(5) of the Manual insofar as it establishes absolute standardized

deductions for the expenses in issue (Pet. App. A-13). The court of appeals affirmed on the basis of the district court's opinion (*id.* at A-1 to A-2).

ARGUMENT

The decisions below hold only that Missouri's *absolute* limitations on the amount or type of work-related expenses that may be considered in determining eligibility for AFDC benefits are inconsistent with 42 U.S.C. 602(a)(7); they do not hold that the particular expenses sought to be deducted by the named respondents are "reasonably attributable to the earning of * * * income" within the meaning of the statute. That is a question the State must now decide with respect to each respondent on an individualized basis. The court's narrow conclusion that absolute limitations are impermissible is compelled by this Court's decision in *Shea* v. *Vialpando, supra,* and does not conflict with the decision of any other court of appeals. Review by this Court therefore is not warranted.[4]

1. The Social Security Act and implementing regulations clearly provide for the consideration of all expenses reasonably attributable to earning income when determining eligibility for and the amount of AFDC grants. The statute, 42 U.S.C. 602(a)(7), requires state agencies to take "any" such expenses into consideration, and 45 C.F.R. 233.20(a)(7)(i) pro-

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[4] Petitioners also challenge (Pet. 19-23) the award of attorney's fees to respondents pursuant to 42 U.S.C. 1988. This issue does not warrant review in light of the decisions last Term in *Maher* v. *Gagne,* No. 78-1888 (June 25, 1980), and *Maine* v. *Thiboutot,* No. 79-838 (June 25, 1980). See also *Hutto* v. *Finney,* 437 U.S. 678, 693-700 (1978).

vides that "all work expenses" shall be deducted. Moreover, the legislative history of 42 U.S.C. 602(a)(7) indicates that Congress intended the states to take "*fully* into account" expenses reasonably related to earning income. S. Rep. No. 1589, 87th Cong., 2d Sess. 18 (1962) (emphasis added), quoted in *Shea* v. *Vialpando, supra*, 416 U.S. at 263. The provisions of the Manual of the Missouri Division of Family Services at issue here are inconsistent with this statutory language, regulation, and legislative history. They are also inconsistent with the Court's decision in *Shea* v. *Vialpando, supra.*

In *Shea*, the Court considered the validity of a $30.00 per month ceiling imposed by the State of Colorado on the amount of work-related expenses (except for mandatory payroll deductions and child care expenses) that could be deducted from gross earned income in calculating need. The respondent in that case had purchased a used automobile to travel to and from work. Prior to adoption of the ceiling, she had been permitted to deduct her monthly mileage costs of $47.30 and $63.81 in monthly car payments. The effect of the ceiling was "to reduce respondent's monthly deductions for transportation expenses related to employment from $110 to $30," and the corresponding increase in her monthly net earned income rendered her ineligible for continued AFDC assistance. 416 U.S. at 257. The Court held that the Colorado provision was invalid under 42 U.S.C. 602(a)(7) because it was "in effect a maximum or absolute limitation upon the recognition of [work-related] expenses." 416 U.S. at 265. In the Court's view, the federal statute requires that an applicant or recipient's income *and* work-related expenses be considered on a case-by-case basis and that

> no limitation, apart from that of reasonableness, may be placed upon the recognition of expenses attributable to the earning of income. Accordingly, a fixed work-expense allowance which does not permit deductions for expenses in excess of that standard is directly contrary to the language of the statute.

416 U.S. at 260. The Court also concluded that the absolute limitation would result in a disincentive to work for all applicants or recipients whose reasonable work-related expenses exceeded the $30.00 standard deduction, thereby frustrating the congressional purpose underlying the provision for deduction of such expenses. *Id.* at 263-265.

The reasoning and conclusion in *Shea* v. *Vialpando* apply with equal force in the instant case. To be sure, Missouri has not adopted one maximum amount covering a number of different expenses, as Colorado had done in imposing a $30.00 deduction for all work-related expenses except mandatory payroll items and child care. Missouri has instead imposed separate limitations on the deductibility of three categories of expenditures. But this hardly serves to distinguish the result in *Shea* v. *Vialpando*.[5] An absolute limitation on one component of overall work-related expenses is equally inconsistent with the plain language of 42 U.S.C. 602(a)(7) and the implementing regulation, which require that "any" and "all" expenses reasonably attributable to earning income be considered and that such expenses be considered on a case-by-

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[5] Indeed, in *Shea* v. *Vialpando* the only expenses at issue for the named plaintiff were for transportation; the standard deduction therefore operated as an absolute limitation for that single item.

case basis.[6] Such a limitation would also operate as a disincentive to work for applicants or recipients whose reasonable expenses for that single item fall outside the applicable limitation, just as the more comprehensive standard deduction involved in *Shea* v. *Vialpando* discouraged AFDC applicants from seeking employment.

Missouri's limitations on deductibility of transportation and clothing expenses also differ from the standard deduction involved in *Shea* v. *Vialpando* in that they do not involve a maximum total amount that may be deducted for these items in any given month.[7]

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[6] Amici States of Mississippi, Rhode Island, Arkansas and New Hampshire plainly err in suggesting (Br. 10) that the Missouri provisions comport with federal law because they ensure "individualized" consideration of each item of expenditure for applicants and recipients generally. The statute and the decision in *Shea* v. *Vialpando* require individualized treatment of each applicant or recipient. Absolute limitations on particular expenditures that cannot be overcome by an individual applicant or recipient under any circumstances are inconsistent with this requirement.

[7] The limitation applicable to meals of $1.00 per work day does result in an absolute maximum amount that may be deducted for the month and therefore is squarely controlled by *Shea* v. *Vialpando*. Contrary to petitioners' assertion (Pet. 12-13), this case does not concern the circumstances in which expenditures for meals consumed during the work day must be considered "reasonably attributable to the earning of * * * income" or whether a state, in making that determination, may refuse to allow a deduction in an amount necessary to pay for the cost of a meal at a restaurant when the applicant or recipient can bring his lunch from home. The decisions below hold only that where meal expenses *are* considered to be reasonably attributable to earning income, the state may not impose a ceiling on the amount deducted that does not permit consideration of reasonable expenses for meals in excess of that amount.

In the case of the use of an automobile for transportation to and from work, the applicant or recipient may deduct 17 cents per mile. Missouri argues (Pet. 13-14) that this figure is reasonable because it is utilized by the State to reimburse its own employees and by the Internal Revenue Service for income tax purposes and that it is calculated to cover operating expenses, depreciation, repairs, maintenance, insurance, finance charges, and other relevant costs. We do not dispute that in many—perhaps most—situations the 17 cents per mile deduction will be sufficient to cover the applicant or recipient's reasonable automobile expenses. In the present case, however, respondents Schoue and Loeffel contend that 17 cents per mile is insufficient because of the high repair and insurance costs they incurred (Pet. App. A-9 to A-10). Assuming that Schoue's and Loeffel's expenditures for repairs and insurance, as well as other expenses they claim for use of their automobile in connection with work, are "reasonably attributable to the earning of * * * income" (a question the courts below did not decide).[8]

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[8] The "reasonably attributable" test has two aspects: (1) whether the particular expenses are fairly *attributable* to the earning of income, and (2) whether the expenses are *reasonable* under the circumstances of the individual case. With respect to the first prong of the test, the Court cautioned in *Shea* v. *Vialpando* that a state should scrutinize with particular care expenditures claimed for automobiles or other items that are in large measure capital expenditures that will also be used for personal purposes unrelated to employment. But the Court recognized that such expenditures must be taken into account in appropriate circumstances on a case-by-case basis where an automobile is necessary to get to work and particular expenses are necessary to use the automobile. 416 U.S. at 256-257 n.4.

Under the second prong of the test, the State presumably could consider whether the particular expenditures for an automobile were reasonably necessary under the circum-

Missouri's policy is inconsistent with 42 U.S.C. 602 (a)(7) to the extent it bars them from deducting such expenses in excess of the amount calculated at the rate of 17 cents per mile.[9]

Missouri's restrictions on deductibility of clothing expenses also differ from the standard deduction involved in *Shea* v. *Vialpando* because they limit the *type* of clothing qualifying for a deduction (uniforms, special shoes, and other articles the use of which is limited to employment (Pet. 5)), rather than the *amount* that may be deducted. But the effect of Missouri's policy is to establish an absolute maximum of zero for the amount that may be deducted for clothing other than uniforms and comparable items

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stances—*e.g.*, whether the monthly installment payment for the automobile was excessive because the applicant or recipient had purchased an unduly expensive car, or whether costs of maintenance or repair were excessive because they were for cosmetic or similar purposes rather than operation of the car in connection with work.

These and other factors remain open for evaluation by the State with respect to Schoue, Loeffel, and other class members.

[9] It is instructive in this regard that the Court in *Shea* v. *Vialpando* cited with apparent approval the Colorado regulation governing transportation expenses that was in effect prior to the adoption of the $30.00 standard deduction at issue in that case. The predecessor regulation provided for deduction of 5 cents per mile (plus parking fees) *and* for deduction of the cost of "[p]urchase, repair, or upkeep of a vehicle" where it was essential to retain employment and the county had approved the arrangement. See 416 U.S. at 254 & n.1. Similarly, here, AFDC applicants and recipients must be permitted to show that, in their particular circumstances, the 17 cents per mile deduction is not adequate to cover all of their transportation expenses reasonably attributable to earning income because of unusual insurance, repair, or other expenses.

or, put another way, to establish an irrebutable presumption that the cost of clothing that may be worn off the job can never be "reasonably attributable to the earning of * * * income." Viewed in either way, the absolute restriction is inconsistent with the statutory scheme and the decision in *Shea* v. *Vialpando*. Like an automobile, clothing is, in large measure, an item of expenditure that (except for uniforms and comparable articles) may be utilized for personal purposes unrelated to work. For this reason, states "should scrutinize with particular care" claimed expenses for clothing not usable exclusively for work, just as they should scrutinize capital-type expenditures claimed for an automobile. 416 U.S. at 256-257 n.4. And we quite agree with petitions (Pet. 13) that states should not be expected to finance, through an increased AFDC grant, the maintenance of separate wardrobes merely because, as a matter of taste, the recipient would prefer to wear clothing in his nonworking hours that is different from that required for work. But, especially where the applicant or recipient has taken new employment, it may be that he does not own clothing that is appropriate attire for work. If not, he may have to spend a considerable sum for clothing to obtain or retain his job. In such circumstances, the incremental expenses might properly be regarded as "reasonably attributable to the earning of * * * income," even though the particular articles of clothing could also be worn during nonworking hours.[10] Yet the policy contained in Mis-

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[10] The recognition of clothing expenses, like other work-related expenses, must be considered on a case-by-case basis. The district court did not decide whether the named respondents in this case are entitled to deduct their clothing expenses.

souri's Family Services Division Manual would prohibit the deduction of such expenses under any circumstances. To this extent, the policy is inconsistent with the statute.

We do not contend that a State may not, in the interest of administrative efficiency, adopt a standard meal or mileage allowance as a convenient method of allowing deductions of work-related expenses in the general run of cases. As this Court stated in *Shea* v. *Vialpando, supra*, 416 U.S. at 265, "[i]t is, of course, not the adoption of a standardized work-expense allowance *per se* which [is] violative of [42 U.S.C. 602 (a)(7)], but the fact that the standard used by [the State] is in effect a maximum or absolute limitation upon the recognition of such expenses."

2. There is no conflict among the circuits on the question presented in this case. The only other court of appeals to consider a similar question summarily affirmed a decision striking down a 17 cents per mile transportation allowance that did not permit proof of actual expenses in excess of that amount. See *Fones* v. *Percy*, No. 78-C-191 (W.D. Wis. Dec. 7, 1978) (Br. in Opp. A-1 to A-5), aff'd, 601 F.2d 600 (7th Cir. 1979) (Table). See also *Perez* v. *Chang*, 438 F. Supp. 238 (D. Hawaii 1977).[11] Hence, review of the decision below is not warranted.

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[11] The only contrary authority is a district court decision, *Weaver* v. *Page*, No. 78-458-Orl-Civ-R (M.D. Fla. Apr. 9, 1979) (Amicus Br. 13-18), that concerned only the validity of a 14 cents per mile allowance for transportation. Deductions for meals and clothing were not involved.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

WADE H. MCCREE, JR.
Solicitor General

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